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FOREWORD

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Calendar

March 3—Denver Bar Association regular monthly meeting, 12:15 P. M., Chamber of Commerce dining room. The speaker will be William W. Crowdus, of St. Louis, Mo., one of the leaders in the adoption in Missouri of the non-partisan judicial selection plan in effect there.

April 7—Denver Bar Association regular monthly meeting, 12:15 P.M., Chamber of Commerce dining room.

The Lawyer and The American System†

BRENDAN F. BROWN *

A discussion of the relation of the lawyer to the American system will be of benefit to the legal profession, the public, and the historian of broad interests, concerned with the functional aspects of history. For the legal profession it should be a source of great inspiration toward future achievement, making its members aware of herculean participation of lawyers of other days in the momentous task of building the American system. Certainly the horizon opened up by such a subject should spur the American bar toward the goal of continuing to make the American system workable. Considered from a selfish point of view, the American legal profession would do well to dispel popular distrust against it by an educational program to show the importance of the lawyer in the establishment and

† Reprinted by permission from The North Carolina Law Review, December, 1945. Material of a similar nature was presented in a radio broadcast over Station WINX on August 26, 1945, as a public service of the American Bar Association and WINX, in cooperation with the District of Columbia Bar Association. Members participating in the panel were:

Mr. William T. Hannan, Member of the District of Columbia Bar and former Chairman of the Junior Bar Conference of the American Bar Association of the District of Columbia;

Professor George A. Cassidy, Instructor in Commercial Law, Georgetown School of Foreign Service;

Mr. James F. Reilly, Commissioner of Public Utilities;

Dr. James J. Hayden, Dean, Columbus University Law School;

Mr. Joseph D. Bulman, Member of the District of Columbia Bar; and

Dr. Brendan F. Brown, Author of this article.

* Professor of Law and Acting Dean of the School of Law, The Catholic University of America, Washington, D. C.

expansion of the American system, and in its preservation and continued success. It is true that in every generation there have been lawyers who have deviated from the high traditional ideals of the profession in the sphere of public service by concentrating solely upon the narrow field of prediction of legal rights and liabilities, and partisan advocacy for gain. But it is the duty of the bar to correct distorted pictures of such exceptional deviations.

Sections of the American public are still not completely informed of the valuable services which have been and are being performed by the legal profession in the cause of maintaining the civic, political and economic life of the nation. There is need of publicizing the opportunities offered *gratis* to the indigent by an organized legal aid movement. The public will benefit, as well as the bar, by a well worked out program of efficient public relations, if properly presented by influential lawyers' organizations.

The story of the American system could well be related from points of view other than that of the lawyer. The functional aspects of the narrative can probably be best stressed, however, by placing the lawyer in the center of the panorama. The sciences of theology, philosophy, politics and economics, and those learned in these intellectual disciplines, contributed essential ingredients to the great experiment which resulted in the American system, but it remained for the lawyer to construct the formulas which preserved the balance between the various components of the American system, such as between national and local, political and economic authorities respectively, between popular sovereignty and the binding force of custom, and between individual and group rights and interests. Such formulas have always been reducible in ultimate analysis to rules of law.[1]

Precision of expression requires that definite meaning content be postulated for the expressions "lawyer" and "American system," since diverse usage has made these word-symbols amorphous. The choice of meaning has been dictated by the adoption of the largest generic sense consistent with commonly accepted usage. It has also been determined by a *priori* perferences based on what is significant in the American system and in the sphere of the legally skilled.

In this connection, the term "lawyer" will include judges and jurists, as well as lawyers in the narrow and technical sense of legal practitioners. The subcategories of "lawyer," namely, practitioner, judge and jurist are distinguishable but not exclusive. While practicing lawyers are fundamentally interested in winning cases by analytical recourse to law considered apart from morals and political and economic policy, jurists are primarily engaged, from a financially disinterested point of view, in the study and reform of a legal system or systems, surveyed from historical, philosophical, sociological, and institutional levels. Judges combine in the judicial process the elements

[1] O'Mahoney, The Lawyer, the Constitution, and the Modern World (1944) 20 Ind. L. J. 1 at 3.

of adjudication of the specific rights of litigants with the broad environmental view of the jurist.

The phrase, "American system." will refer to that distinctive plan of civilization, as well as to the consequent mélange of peculiar effects, which in turn have produced the characteristic features of the sociological situation existing in the United States today. These effects have followed from putting into practice a very definite political and juridical philosophy, a less specific, yet relatively definite body of economic concepts, and a congeries of remedial formulas, indigenous to the spirit and substance of the Anglo-American common law. From the birth of this system to its present stage of maturity, sub-ideals and minor techniques have varied from time to time. Indeed overwhelming crises have at times greatly changed its contours. But like all great institutions, the fundamental substance of the entity and its essential attributes have never changed.

The blueprint of the plan for the American system began to be drawn up with the Declaration of Independence in 1776. The Constitutional Convention of 1787 continued the work, which reached relative completion with the adoption of the Bill of Rights. The original principles which underlay these documents were drawn upon in the elaboration of the first stage of the American plan. Like any living organism, the American system has grown more complex with time. Its growth has resulted from the inclusion of amendments in to the Federal Constitution after the Bill of Rights, from the expansion of constitutional law, and from periods of re-examination of the question whether American society was adequately preserving a just and right relationship between the individual human being, and his political and economic government, his fellow man, and his Maker.[2]

In the process of establishing the American system, the role of the American lawyer was important and decisive. The American Revolution was essentially a battle between the American legal profession and the English crown.[3] The predominant part which lawyers played in framing the Declaration of Rights and Grievances in 1774, the Declaration of Independence two years later, and thereafter the federal constitution, is evident not only from the controlling percentage of lawyers who wrote these documents, but also from the nature of the specific doctrines therein incorporated, and the implementing institutions. Besides, the historical figure credited with being the father of the constitution was a lawyer.

In the first place, statistics disclose the numerical superiority of lawyers in the work of the great revolutionary instruments which initiated the American system. Of the fifty-six signers of the Declaration of Independence thirty-three were lawyers, or almost sixty percent. The names of Thomas

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[2] Manion, The American Philosophy of Law (1943) 18 Notre Dame Lawyer 317 at 319-320.

[3] Bradway, Legal Service for the Indigent (1941) 16 Tenn. L. Rev. 691 at 692.

Jefferson of Virginia, John Adams of Massachusetts, James Wilson of Pennsylvania, and Charles Carroll of Maryland, are illustrative of some of the famous lawyer-signers of the Declaration of Independence. Of the fifty-five delegates who attended the convention which wrote the federal constitution, at least thirty-three were lawyers. Ten of these had served as state judges.[4] Of the thirty-nine signers of the constitution, twenty-two were lawyers, or almost fifty-six percent. Among the celebrated lawyers who signed the Constitution were Rufus King of Massachusetts, James Madison of Virginia, Alexandre Hamilton of New York, James Wilson and Gouverneur Morris of Pennsylvania, and John Rutledge and the Pinckneys of South Carolina.

Secondly, not only statistics, but also the character of the ideals, doctrines and ideas which were fused together in the historic documents involved in the genesis of the American system, reveals a lawyer origin. Thus a manifestly legal theory was invoked by the Continental Congress which drew up the Declaration of Rights and Grievances against the English Crown in 1774.[5] It proceeded on the argument that the actions of the crown were such as to deprive the colonists of rights to which they were entitled as Englishmen under the common law of England. Two years later, the lawyer-architects of the Declaration of Independence and their associates, realizing the futility of further legal argument, shifted to a normal contention, namely, the justification of revolution by recourse to the broad, juridical doctrine of natural law rights resting upon an immutable, objectively existent moral regime.[6] The capacity of the framers of the Declaration of Independence to achieve this transition is indicative of the breadth and depth of their juristic learning, and of their political and ethical wisdom.

In the federal constitution, as drawn up by the Convention of 1787, the hand of the lawyer is evident. The political doctrine of the separation of powers is worked out in a legal fashion in the first three articles. In the first article, the senate is given judicial authority in the matter of impeachments, and the limits of this authority are described. The legislative process of the Congress of the United States is prescribed as well as the extent of its jurisdiction. Suspension of the privilege of the Writ of Habeas Corpus is forbidden except in specific emergency. There is an injunction against the passage of Bills of Attainder and *ex post facto* laws. In the second article, the germ of executive justice may be seen, later given rule content, under the name of administrative law. In the third article, of course, where the judicial branch of the federal government is erected, benefit of legal counsel is unmistakable. The same may be said as to the fourth article, where for

[4] Warren, The Making of the Constitution (1937) 55.

[5] See Pound, The Spirit of the Common Law (1921) 100-101; Lawyers Who Signed the Constitution (1935) 13 The Law Student 29-30.

[6] Brown, Brendan F., The Bar and the Democratic Process (1939) 13 Temp. L. Q. 287 at 290. See U. S. Const. Art I §§1-9.

example, the full faith and credit and the privileges and immunities clauses are to be found.

It is well known that a number of the states ratified the constitution, with the assurance that Congress, at its first session, would adopt a Bill of Rights to guarantee the liberty of the individual against arbitrary government. by the newly erected federal authority.[7] The Bill of Rights contained two factors, namely, the enumeration of specific rights, liberties, and immunities, which were regarded as essential implications from the philosophy that the sovereign was legally omnipotent, but not morally, and that the sovereign ruled, but was restrained by the laws of God and nature, and the expressed choice of precise legal tools, to make workable these rights, liberties and immunities in court and legislature. Both the ideals and techniques of the Bill of Rights were distinctively legalistic and juristic. Lawyers realized that it would have been idle, from a practical point of view, merely to have recognized *in vacuo* the intrinsic dignity of human personality, and the submission of the will of the sovereign to an objective juridical and moral order, but not to have specified the ways in which abstract ideals were to be translated into action by legalistic methodology. Other legal means might have been chosen, but the ones in question have proved adequate to make effective the principle that law is much more than a command of the sovereign, based on physical power.

The legal techniques which lawyers wrote into the Bill of Rights, as distinguished from the rights therein recognized, included among others due process of law, in reference to life, liberty and property.[8] Curbs were erected to prevent excessive bail and excessive fines and cruel and unusual punishments.[9] The requirement of a presentment or indictment of a grand jury, except in clearly defined emergencies, before a person could be held to answer for a capital or otherwise infamous crime, was established.[10] The rules of the common law were to control with respect to the re-examination of a fact in a federal court, after that fact had been tried by a jury.[11] The contributions of lawyers to the writing of the Bill of Rights are particularly evident in the Sixth Amendment:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

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[7] Warren, Congress, The Constitution and The Supreme Court (1935) 82 ff.
[8] U. S. Const. Art. V.
[9] Id. Art. VIII.
[10] Id. Art. V.
[11] Id. Art. VII.

It is true that the legal forms which lawyers incorporated into the Bill of Rights were largely derived from many intellectual, normative, and experiential elements, borrowed from historical sources, both legal and non-legal. But creative genius was at work in the activity of assembling these elements and in inter-relating them, so as to provide an enduring system, with qualities of both stability and change, adequate to meet the constantly expanding social needs of a growing population, on the verge of developing the resources of a mighty continent. In this process the role of the American lawyer was most influential. The techniques of the Bill of Rights were inspired by the experience of English constitutional law, and were adaptations of juridical implements which were being built from Magna Carta in 1215, down through the period of Coke, and thereafter in the seventeenth and early part of the eighteenth century.[12] These techniques, however, had never before been formulated with precision, in an orderly unit.

In the third place James Madison, lawyer and legal philosopher, is universally recognized as the father of the federal constitution.[13] There are various reasons for this appellation. Thus, he unquestionably exercised the most controlling influence upon the delegates at the Constutional Convention.[14] There the Virginia plan was presented and was later in substance molded and developed into what became known as the federal constitution.[15] Madison was one of the framers of the Virginia plan, and was a leader in the work of modifying it at the convention.[16]

In general, the political and legal philosophy of Madison was acceptable to the convention in preference to numerous competing philosophies.[17] This philosophy favored the creation of a national, as distinguished from a federal, government. He successfully advocated the political theory of the separation of powers, the election of the President by the people rather than by the legislative branch of government, the creation of a two house legislature, at least one of which was to be elected by the people, the prevention of en-

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[12] Warren, op. cit. supra note 7, at 16, 17. See The Federalist, No 4: "Is it not the glory of the people of America, that whilst they have paid a decent respect to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience."

[13] Farrand, The Framing of the Constitution of the United States (1913) 196; Warren, op. cit. supra note 4 at 57. It is there stated that Madison had studied theology, and the theory, history, and practice of government.

[14] Farrand, op. cit. supra note 13 at 197 ff.

[15] Id. at 68.

[16] Burns, James Madison, Philosopher of the Constitution (1938) 12; Farrand, op. cit. supra note 13 at 68; Warren, op. cit. supra note 4 at 797-804; Writings of James Madison (Hunt's ed. 1833) IX, 502, Madison to John Tyler.

[17] Burns, James Madison, Philosopher of the Constitution (1938) 64 ff.

croachments by the states upon the federal government, and the protection of each state from encroachments by others.[18]

After the adjournment of the Constitutional Convention, the draft of the constitution was submitted to the Continental Congress, which presented it to ratifying conventions in the several states.[19] Madison continued to father the constitution by joining with Hamilton and Jay, in a series of newspaper letters, known as "The Federalist," to influence public opinion in favor of adoption. Madison is credited with having written twenty-six of the eighty-five letters, in whole or in part.[20]

Twelve amendments to the constitution were proposed to the legislatures of the several states by the first Congress, which met in New York, in 1789.[21] The first and second of these proposed twelve amendments were rejected by the States, but the others were approved and became known as a Bill of Rights.[22] The twelve amendments were based on about a score of amendments offered in the House of Representatives by Madison.[23] These in turn were preceded by the Virginia Declaration of Rights of 1776.[24] Madison was chiefly responsible for the formulation of the religious freedom clause of this declaration.[25]

Finally, the chief account of the proceedings of the convention, adequately recorded and preserved, was reconstructed from a private diary kept by Madison.[26] His legal mind was reflected by his ability to preserve the relevant and significant and by the great value which he attached to written proceedings which would enable future generations of lawyers to have the benefit of the views of the delegates of the convention for purposes of interpretation and ascertaining intention. His record was carefully anticipated, faithfully executed, and meticulously preserved.

Lawyers had a considerable hand, therefore, in fashioning the federal constitution, with its Bill of Rights, keystone of the political, economic and juridical structure of the American system. But their devotion and contributions to that system did not terminate there. They continued to guide the subsequent growth of Constitutional law down to the present time. They made the constitution work.[27]

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[18] Farrand, The Framing of the Constitution of the United States (1913) 76; Haines, The Constitution of the United States (1932) 94, 98, 186.

[19] Warren, The Making of the Constitution (1937) 744.

[20] Warren, The Making of the Constitution (1937) 788-791; Burns, James Madison, Philosopher of the Constitution (1938) 14.

[21] Brant, James Madison (1941) 249 ff.

[22] Idem.

[23] See 1st Cong., 1st sess. June 8, 1789; I Annals of Congress 433-36; Brant, James Madison (1941) 249.

[24] Burns, James Madison, Philosopher of the Constitution (1938) 119 ff.; Helderman, The Virginia Bill of Rights (1942) 3 W. & L. L. Rev. 225-245.

[25] Hunt, The Life of James Madison (1902) 12.

[26] Warren, The Making of the Constitution (1937) 125.

[27] Haines, The Constitution of the United States (1932) 213-252.

The record of the American legal profession in the sphere of public and governmental service may be illustrated by recalling that seventy-five percent of the Presidents of the United States have been lawyers, i.e., twenty-four out of thirty-two.[28] Beginning with the first Congress, there has been an overwhelming number of lawyers, certainly a plurality, in Congress, and the state legislatures. Well known indeed is the work of the judges of the Supreme Court, particularly in the earliest period of the republic, in putting content into such clauses as due process, equal protection, and law of the land. In fact, lawyers have had a virtual monopoly of the judicial department of the government. In no other country in the world, no excepting England, have lawyers exercised such influence in public affairs as they have in the United States.[29]

This nation has survived war, economic depression of vast proportions, financial panic, hard times and many perilous periods of crisis. In each case the philosophy of the constitution has been adjusted by lawyers, to constantly changing sociological conditions, by the invention of ingenius legal forms and procedures, which have enabled the democratic process to survive. This is in sharp contrast with the history of the constitutional systems of certain other countries, which have broken down under the weight of political and economic pressure.[30]

Lawyers did much, therefore, to establish and maintain American political democracy. Their participation in laying the groundwork of the American economic order, and in coordinating it with the legal order is also outstanding. The American society for which the federal constitution was written postulated an economic system, built upon a capitalistic structure of private property, and protected by a jural regime, which encouraged free enterprise and safeguarded the individual from the state, and from other individuals through rules and percepts of law. Emphasis was upon the sancity of the property rights of the individual in the acquisition and transfer of property, in keeping with the pioneer conditions of eighteenth and nineteenth century America.[31]

The conceptions of capitalism in the sense of a social policy of allowing individuals and private corporations to hazard money and wealth in constructive enterprises, to produce more money and wealth, and little or no governmental regulation, were not the creations of lawyers, but rather of the national mind. But when in the course of time, public opinion realized the necessity of a moral, as distinguished from an amoral capitalism, of substituting a socialized idea of private property, in place of the previously existing individualized notion, and of reasonably regulating certain types of

[28] Rose, The Bar as a Governing Caste (1942) 48 W. Va. L. Q. 87 at 88.
[29] Id. at 89.
[30] Dodd, The Constitution—1787 and Today (1944) 20 Ind. L. J. 55 at 59 ff.
[31] Cole, Some Observations on the Significance of the American Bill of Rights (1943) 18 Wash. L. Rev. 90-102.

business activity, lawyers were prepared to readjust the legal order. They did this in many ways, principally by the formulation of administrative law and by preserving a balance in the legal sphere between uniformity and certainty on the one side, and flexibility and discretion on the other.

Administrative law was an important contribution, made by lawyers, to the task of modifying an obsolete economic order. This phenomenon arose in consequence of changing social conditions, which rendered archaic the traditional techniques of the established court system. Executive justice began as soon as it was conclusively demonstrated that adequate judicial justice was not possible in certain types of cases, involving such socially necessary activities as public utilities, railroads, and the like.

In the creation of administrative bodies and agencies, the art of the lawyer has contributed much to the law applicable and the means followed. There has been and probably will continue to be disagreement among lawyers as to the extent of the discretion which should be allowed those making decisions in the field of administrative law. But there has always been a common area of agreement as to the necessity of executive justice and of preserving an equilibrium between it and the philosophy of the federal constitution, which manifestly aimed to create a government of laws and not of men.

Despite the adoption of a rather socialized view of private property, and of the policy of a reasonably regulated capitalism, American public opinion has never veered far from the postulate of a fairly competitive economic order. The American system from its foundation can be characterized, among other ways, by its recognition of the principle that political democracy is impossible without a relatively large amount of certainty in the law of the land, to sustain this competitive regime.[32] For business to thrive and function adequately, business men must be able to predict with considerable certainty the behavior of the State, as represented by its executive officers, and by its courts and legislatures. American lawyers, carrying forward the tradition of the legal profession and of the Anglo-American common law, have given business this certainty and uniformity.[33]

Examples in the Roman, English and American law, showing the orientation of the legal system toward certainty and uniformity in the light of guiding concepts supplied by the merchant, trader, business man, and capitalist are numerous. Thus these qualities resulted when commercial ideas were absorbed by the Roman legal order, beginning with the creation of the *Jus Gentium*, in the third century B. C. approximately.[34] A somewhat paralleling

[32] Barker, Economic Interpretation of the Constitution (1944) 28 Tex. L. Rev. 373-391; O'Mahoney, The Lawyer, The Constitution, and the Modern World (1944) 20 Ind. L. J. 1 at 10.

[33] See Adler, Law and the Modern Mind; A Symposium, Legal Certainty (1931) 31 Col. L. Rev. 91.

[34] Brown, Brendan F., The Jurisprudential Basis of Roman Law (1937) 12 Notre Dame Lawyer 361 at 363 ff. See 1 Voigt, Das Jus Naturale, aequum et bonum und Jus Gentium de Römer, ¶¶315, 42, 43, 79-88, 103.

result occurred when the commercial customs, which were called the Law Merchant, were made a part of the English Common law by Lord Mansfield, during the middle of the eighteenth century.[35] Later the Law Merchant was codified by the English Bills of Exchange Act in 1882. It has been adopted in more than forty of the English colonies and independencies.[36] Today one of the aims of the Law Revision Committee in England is the attainment of uniformity.

In the United States lawyers have worked with business men and bankers, for over fifty years, through the National Conference on Uniform State Laws in the interests of uniformity and certainty. In 1890, the American Bar Association recommended the appointment by each state of commissioners who would draft and recommend uniform state laws. The first meeting of the commissioners took place in 1892.[73] All the states eventually joined the movement, so that now the governor of each state appoints three commissioners.[38]

In 1895, a committee appointed by the Commissioners on Uniform State Laws drafted a bill to codify the law of negotiable instruments, which was adopted by the commissioners the following year.[39] This law, namely, the Negotiable Instruments Law, has been adopted by all of the fifty-three American legislative jurisdictions.[40] The Commissioners have worked out a series of uniform laws, which include, in addition to the Negotiable Instrument Law, such Acts as the Uniform Partnership Act, the Warehouse Receipt Act, the Uniform Sales Act, and many others.[41] Not all of the legislative jurisdictions have accepted all of these laws, but the extent to which they have been adopted is considerable.

Principles of statutory interpretation have been worked out, in the matter of uniform state laws, so as to achieve a maximum uniformity. There is a provision in all save the earliest of these laws that the law "shall be so interpreted and construed as to effectuate its general purpose of making uniform the laws of those states which enact it."[42] The aim of this provision is to influence the courts of one state to follow the interpretation of other states. Courts of a state may revise their own interpretations if they differ from the prevalent view taken by the other states.

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[35] Lawson, Uniformity of Laws, A Suggestion (1944) 26 J. Comp. Leg. & Int. L. 16 at 17-18; Negotiable Instruments Law §§1-50.

[36] Idem.

[37] Lawson, Uniformity of Laws, A Suggestion (1944) 26 J. Comp. Leg. & Int. L. 16 at 20.

[38] Idem.

[39] Brannan, Negotiable Instrument Laws Annotated (6th ed., Beutel) Preface to First Edition.

[40] Negotiable Instruments Low §§1-50.

[41] Idem pp. I-II.

[42] Thus this clause appears in the Uniform Sales Act §74; See Lawson, Uniformity of Laws, A Suggestion (1944) 26 J. Comp. Leg. & Int. L. 16-27.

Lawyers have achieved certainty and uniformity also through the medium of the principle of *stare decisis*, i. e., by strict adherence to precedent. According to this principle, the same remedies are always applied to the same situations of facts. Certainty has resulted from the restatements of important segments of the law by the American Law Institute. The elements of certainty and uniformity now present in the common law are survivals from the period of the strict law and the era of the maturity of law.[43]

While the legal profession has recognized the necessity of certainty and uniformity in law for the benefit of business, it has also admitted the claims of those whose rights depend upon elasticity in the law. Hence in the fields of torts, equity, trusts, administrative law, and the like, which involve a high degree of the normative, the common law has departed from the element of certainty. But such divergence has been regarded by business as consonant with important basic sociological interests.[44]

The legal order has incorporated many commercial concepts, such as negotiability, the presumption of good faith, and certain notions of what constitutes property.[45] But conversely, numerous legal concepts have been prescribed by lawyers for the business world, and have been accepted without protest by the economic order. Builders of that order have taken over such relatively arbitrary legal notions as the Statute of Frauds, requiring certain transactions to be in writing if they are to be given legal effect, Statutes of Limitations, barring the legal enforcement of rights, the peculiar common law doctrine of consideration which does not exist in systems derived from the Roman law, and the anomalous distinctions which have been drawn by the common law, between personalty and realty.[46] Illustrative of the action and interaction which have gone on between the legal and business orders are the exceptions which have been made to the notion of common law consideration, and the building of the doctrine of promissory estoppel.

The American public is not well informed as to the efforts of lawyers to provide legal aid for the poor and the indigent, as a means toward the end of increasing the usefulness of a legal system, which in the Occidental tradition constitutes an essential of any social civilization. The tradition of the American legal profession in this respect was preceded by that of Roman and English lawyers.[47] The ultimate reason and motive for this gratitous service has varied according to time and place. Thus civic duty led the lawyers of ancient Rome to engage in legal aid work, which they regarded as a privilege.[48] In the Middle Ages, the ecclesiastical bar assumed the duty

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[43] See Pound, The Decadence of Equity (1905) 5 Col. L. Rev. 20 at 23 ff.
[44] Idem.
[45] 8 Holdsworth, A History of English Law (ed. 1926) 113 ff.
[46] See, 2 Simes, The Law of Future Interests (1936) 545 ff.
[47] Bradway, Legal Service for the Indigent (1941) 16 Tenn. L. Rev. 691-699.
[48] Idem.

of eliminating injustices arising from poverty as a matter of applied Christianity. St. Ives, who died about 1300, and St. Thomas More, who was martyred in 1535, patron saint of lawyers, were celebrated for their charitable legal work.[49] In 1494 a Statute of Henry VII aimed to help those too poor to avail themselves of legal counsel.[50]

After the Middle Ages, the idea gradually came to the front that, in England, legal aid work was fundamentally a professional obligation.[51] This was part of the general idea which has traditionally permeated the Anglo-American legal profession, namely, that its members should work primarily for the public good, and only secondarily for the financial gain of the individual lawyer. It is true of course that at times lawyers have reversed this order. By and large, however, the concept has survived that the lawyer is a member of a learned profession, which must never ignore its public responsibilities and leadership. Moved by its faith in the need of preserving the American system by the practical protection of constitutional and legal rights of substance and personality, lawyers have been active in providing able counsel for the poor and indigent, in both civil and criminal matters, and have given unstinted service to voluntary civic groups and associations.

After legal aid had developed into a professional tradition, the transition was from unorganized to organized legal aid. Several types of organized legal aid subsequently evolved. These included the creation of bar association committees, and the like. The American Bar Association has a standing committee on legal aid. There is the National Association of Legal Aid Organizations.[52]

Organized legal aid has taken the form of legal aid clinics, municipal bureaus, and departments of a social agency. The American legal profession has created legal aid bureaus and societies at many key points of the nation. This assistance parallels that rendered by doctors' hospitals and clinics for the poor. These bureaus have protected the public in many ways, such as from trade rackets.[53] The legal aid work in New York and Washington may be regarded as typical.

According to Harrison Tweed, President of the Legal Aid Society of New York, in the sixty-ninth annual report of that society, for the year 1944:

". . . The Legal Aid Society exists in order to give to the poor of

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[49] Idem.

[50] See Egerton, Historical Aspects of Legal Aid (1945) 61 L. Q. Rev. 87 ff.

[51] See Bradley, Law, Its Nature and Office as the Bond and Basis of Civil Society (1884) 47; Bradway, Legal Service for the Indigent (1941) 16 Tenn. L. Rev. 691-699.

[52] Smith, R. H., Legal Aid During the War and After (1945) 31 A. B. A. J. 18 at 19 ff.; Bradway, The Challenge to Organized Legal Aid (1944) 22 Tex. L. Rev. 327-344.

[53] Smith, R. H., Legal Aid During the War and After (1945) 31 A. B. A. J. 18.

Greater New York who have legal troubles (and they number over 30,000 each year) the help they need to solve these troubles just as the free hospitals exist to give the sick the care they need to cure their ills."[54]

From this report, it appears that contributions to this society from lawyers, prior to the year 1944, amounted to more than sixty thousand dollars, as compared with less than ten thousand dollars from all other sources. The report states that "Applicants who come to the Society from the armed services continue to be about one fourth of the total number of applicants." In New York City there is a group of volunteer lawyers who act as an appeals committee to advise as to the taking of appeals from lower court decisions, especially those of the criminal courts.[55]

In the District of Columbia a Legal Aid Bureau, a charitable corporation, was founded in 1932, under the auspices of the Council of Social agencies to provide legal aid and assistance to those unable to pay therefor. This bureau became a separate member agency of the Community Chest in 1934. The Bar Association of the District of Columbia has operated a legal aid desk, since 1937, in the office of the Clerk of the Municipal Court.[56]

The principal type of legal matter handled by these legal aid bureaus in the past related to domestic relations, particularly marriage and divorce and *habeas corpus* proceedings for children; disputes growing out of the landlord and tenant relation; contracts, especially with installment sellers; and proceedings to effectuate a change of name.[57] With impending demobilization, reconversion, and readjustment, problems in these fields will be multiplied and others will be added. Following its very creditable tradition of public service, the American legal profession may be expected to fulfill its enlarged obligations in the years which lie ahead.

Legal aid societies have been supplemented by legal aid clinics. The avowed purpose of the former is to render public servic by aiding the poor, of the latter to benefit students, as well as the poor. Some of the law schools have joined in the legal aid movement by offering their facilities and the energies of a part of their student body to assist the indigent. The Legal Aid Clinic of Duke University is an example.[58]

Lawyers have made available legal assistance, often despite considerable financial sacrifice, in pursuance of the Sixth Amendment of the Federal Constitution, which guarantees counsel for defense in all criminal prose-

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[54] Id at 4.
[55] Id. at 5.
[56] See Seventh Annual Report of the Director, Legal Aid Bureau of the District of Columbia (1939).
[57] See Report of the President, Sixty-ninth Annual Report of The Legal Aid Society of New York (1944) at 4.
[58] Bradway, Legal Aid Clinics Train Young Advocates (1942) 26 J. Am. Jud. Soc. 14 ff.; Elliott, Legal Clinic versus Legal Aid Society (1936) 8 Am. L. School Rev. 410 ff.

cutions and of "the equal protection clause" of the Fourteenth amendment.[59] The rather recent mass sedition trial, held in the national capital, is an example of how counsel was made available *gratis* to the criminally accused. Despite the raging of war and the involvement of highly explosive political factors, the Sixth Amendment was faithfully given effect through the donation of professional services, in some instances leading to great personal hardship. Even those accused of the most heinous crimes receive benefit of counsel, appointed by the Court, if they are financially unable to employ counsel.

The future responsibilities of the bar in the maintenance and extension of the American system, both at home and abroad, are measurable in terms of the increasing pressure of forces which constantly strive to substitute opposing modes of social life, radically different civilizations, and above all, solely materialistic conceptions of the nature of man, and the purpose of his existence. It is indeed a gratifying sight to observe how the American system was used as a guide, approximately speaking, when the representatives of the United Nations met in San Francisco, to draw up the World Charter and the Statute of the International Court of Justice. The keeping of world peace has always been the responsibility of lawyers, the designers of international law and of those juridical institutions which afford the means by which that law may be translated into action. May American lawyers ever seek to extend the blessings of the American system to the whole world.

The Lawyer and the Community†

By CARL D. FRIEBOLIN, Cleveland*

If you think for a minute that I'm going to apologize for the triteness of my subject, you're right. The subject was not of my choosing—nor the speaker, either. If he had not introduced me with such eloquent praise, I would name the man who is to blame. I can't suppose any subject could be more vague and less restricted and less definite.

After he had suggested the subject to me, I became curious to learn just how many times that, or a similar topic had been discussed at Bar Association Meetings. I suspected there were very many. So I examined the records for 12 years back. It was quite a task. But I had a lot of time. As most of you know the Bankruptcy Court has not been busy lately. It has become the Court that nobody knows. Apparently everybody has money and nobody

[59] Bradway, The Challenge to Organized Legal Aid (1944) 22 Tex. L. Rev. 327-344.

† Reprinted by permission from the Journal of The National Association of Referees in Bankruptcy, January 1946. This address was delivered before the Judicial Section of the Ohio State Bar Association, November 29, 1945. It was printed in the Ohio Law Reporter, Cincinnati, in its issue of December 17, 1945.

* Referee in Bankruptcy since 1916; past president (1931-32) of the National Association of Referees in Bankruptcy; LL.D., Ohio Wesleyan University.

owes any debts. I have no doubt but that if Winston Churchill were a Referee in Bankruptcy, he would say: Never before in the history of human relations have so many, owed so little, to so few.

In looking over these various speeches, strange to say, I didn't find one entitled exactly as mine is today: "The Lawyer and the Community." There were a great many similar to it however, for example:

"The Lawyer and the Public," "The Lawyer and his Country," "The Bar and The People," "The Influence of the Lawyer in the Community," "The Legal Profession in the Community" and a lot of others, all of the same general tenor. Of course there were quite a number of them, which I could hardly describe as on the alkaline side. But many of them—I should say most of them—were interesting and provocative, made by able lawyers, who spoke obviously after deep study and with pronounced conviction.

The truth is, that I could do a lot worse—and I probably shall—than merely reading to you some excerpts and quotations from these many and varied speeches.

I was rather startled to find in my search, that upon this well-worn subject, some of the most distinguished members of the bar had made addresses: for example, Elihu Root, Chief Justice Stone, Mr. Justice Douglas and Mr. Justice Jackson and Newton D. Baker. And I must not overlook several presidents of the Ohio Bar Association including Presidents George Murray and Howard Barkdull of our City. And only last month, at a meeting of the Trumbull County bar, I saw by the papers, that our current president, Mr. Taggart, in an address sneaked in a few words on the relation of the lawyer and the public.

The most striking thing about all of these speeches was, that invariably they began with some reference to the loss of prestige by the bar, the unfortunate reputation of lawyers among the general public, the decline of the lawyers eminence in the community from what it had been—if ever.

President Murray, at the Annual Meeting of this Association, spoke of the loss of respect for the bar: he said:

"From time immemorial the public has been prejudiced against the lawyer."

He then traced that hostility beginning with quotations from Shakespeare, through Charles Dickens and others.

Mr. Barkdull, when he was president, speaking on "The Bar and the Public" referred to "the decline in the prestige of the bar in our present day life, as compared with its high positon in the past."

He then showed how we got this way, by tracing the position of the lawyer beginning with Rome and Athens down to date.

At the last American Bar Meeting in Cleveland, Mr. Paul Bellamy speaking on "The Public and the Bar" threw at us the verse from St. Luke:

"Woe unto you also, ye lawyers; for ye lade men with burdens grievous

to be borne, and ye yourselves touch not the burdens with one of your fingers."

It remained, I think, for Chief Justice Stone, several years ago, to describe our situation as it exists today most tersely, completely and fairly; his words are worthy of quotation; his subject was "The Public Influence of the Bar." After discussing the valuable services of the bar in earlier days, he says that we can not shut our eyes to the laymen's general dissatisfaction with lawyers today. He then proceeds to analyze it:

"The rise of big business has produced an inevitable specialization of the Bar. The successful lawyer of our day more often than not is the proprietor or general manager of a new type of factory, whose legal product is increasingly the result of mass production methods. More and more the amount of his income is the measure of professional success. More and more he must look for his rewards to the material satisfactions derived from profits as from a successfully conducted business, rather than to the intangible and indubitably more durable satisfactions which are to be found in a professional service more consciously directed toward the advancement of the public interest. Steadily the best skill and capacity of the profession has been drawn into the exacting and highly specialized service of business and finance. At its best, the changed system has brought to the command of the business world loyalty and superb proficiency and technical skill. At its worst it has made the learned profession of an earlier day, the obsequious servant of business, and tainted it with the morals and canners of the market place in its most antisocial manifestations. In any case, we must concede that it has given us a Bar whose leaders, like its rank and file, are on the whole less likely to be well rounded professional men than their predecessors, whose energy and talent for public service and for bringing the law into harmony with changed conditions, have been largely absorbed in the advancement of the interests of clients."

This my friends is not a harrangue by a crack-brained demagogue. They are the measured words by the universally respected Chief Justice, and they deserve pondering by every lawyer.

You will have to say this for the legal profession: Unlike any other occupation of which I know, it continually and openly year in and year out, indulges in self-examination, self-criticism and soul-searching, always with a view to an improvement of its members and in the hope of promoting a better and more favorable attitude toward lawyers on the part of the public.

As you may guess, the various speakers upon this subject have advanced many remedies, palliatives and schemes to meet the condition they describe—one or two, even going so far as to advocate direct advertising by the Bar Associations. I shall not retail them to you. But perhaps I may, quite humbly, add to them; perhaps merely emphasize some of them. You know it has been well said: The world needs not so much to be taught as to be reminded.

May I say that I realize also, that unlike Doctors, Dentists and Clergymen, our profession is one, which by its very nature is easily misunderstood. While these other professions always appear to the public to be on the side of the angels, a lawyer, as has been frequently mentioned, represents his client no matter how unpopular he, or his cause, may be. It can't be otherwise; that is inherent in his profession. As I told my brother Referees in Bankruptcy on one occasion, no matter how well the Bankruptcy Law may be administered by them, there would always be outcries of the "evils of bankruptcy." The nature of the law and its unhappy consequences both to debtors and creditors are such, that their labors can never be popular. They are in a position similar to that of the unfortunate chap who spent $1,000.00 to cure himself of halitosis, only to find that his friends didn't like him anyhow.

1. At the outset it must be apparent to all of us, that in order to create a more friendly public atmosphere, we can't do much without organization. In these days of mass production and mass action, the individual—unless he be the exceptional one—is quite impotent in creating a general public attitude towards anything or anybody. It is largely through our Bar Association that we must, and can, influence the mind of the community.

The American Bar Association has done nobly in this regard, in my judgment. It has come a long way since 1906, when Dean Roscoe Pound, delivered an address at the St. Paul convention on "The Causes of Dissatisfaction with the Administration of Justice" and the Old Guard, socalled, was unwilling to have his address printed.

Since that time our American Association has gone a long way to expand its activities to meet the issues of the times. It has extended itself to discuss, and to take a position on, many problems not relating peculiarly to the legal profession but which affected the people as a whole.

Several years ago, in 1938, at Cleveland I believe, it established a Committee on Defense of Civil Liberties, with the President of the Association boasting, that it had steadily broadened its activities "in the fields in which there seemed to be possibilities of helping men and women generally rather than mere clients or lawyers." More recently it has, with considerable force, asserted itself in the struggle for an international organization to promote peace with particular emphasis on an International Court of Justice.

So far as I can learn the State Bar Associations and local Associations, lag far behind our national organization in asserting themselves in the field of public affairs of general appeal. They continue to confine themselves almost entirely to matters relating strictly to lawyers and the courts.

Frankly, I have until recently been lukewarm, to say the least—perhaps a little "right of center"—upon the question of our state, and particularly our local Bar Associations' extending their field of activity into the broader field of public questions, not merely confining itself to matters affecting only lawyers and the courts. But I have, with some reluctance, come to the conclusion

that only in this way can we enlist the sympathy and the confidence of the community in the legal profession, for which we have been constantly striving and which has been stressed in endless numbers of speeches. In his speech to which I have referred Mr. Bellamy, an experienced and discerning newspaper man speaking of the means that might be adopted to improve the standing of the bar with the public, said:

"I should like to see you step out more in all good efforts—I plead with you to increase your extra-curricular activities. I implore you to interest yourselves in the economic, social and political affairs of the doubtful present —do not be parrots, and rest content merely to echo the voices of the comfortable past and comfortable client."

There has been also an occasional voice lifted by a member of the bar and in law journals to the same purport.

You say that puts us into politics. It does. What's wrong with that? Politics after all is merely the science or art of getting things done in a free government.

"If war is the game of Kings, Politics is the game of free peoples."

I know that we lawyers have been conditioned by years of teaching and tradition, to regard political and economic questions as tabu in our Bar Associations. It seems to be regarded as undignified, plebeian; "it isn't done." But you will have to admit, that frequently it is pretty difficult to draw the line. When does an issue become political? When we propose a scheme for the appointment of judges is that not a political question? How are we ever going to get it without going into politics? We shall never achieve it without practicing the art and the method of securing its enactment into law by appealing to the electorate to vote for it. That's democracy in action. That's politics. Any proposal, that contributes to the greater ability of people generally to enjoy the benefits provided by our constitution and protects them under it, should not be beyond, nor beneath, our consideration. The community is entitled to the benefit of the special abilities and skill that lawyers possess. How can we justify leaving it to those less competent? More than that, it will arouse in the community a feeling of respect and confidence in the bar if we show ourselves interested in *their* problems and in *them,* rather than merely in our pet schemes and in ourselves.

You may say: we have other organizations that occupy that field: The Civic League, the Chamber of Commerce and perhaps others. It the first place, unless the bar *as an organization of lawyers* take a stand—in cooperation with such organizations if possible,— the people will not know that the legal profession *as such* has interested itself in the people's common problems. The public should be told—and as frequently as possible. We will find the Press willing to give adequate publicity. It is bound to bring results.

I have already said, that it seemed to me, that the American Bar Association is away ahead of us in this particular. It occurs to me, that in some

way State and Local Bars should in their organization detail, follow more closely that of the American Association. Our several committees in America, state and local associations are not alike; they might well be, so far as consistent with our respective areas of operation. It would encourage exchange of information and ideas. It would tend to promote united effort and thus more effective effort. The National, State and Local Committees might prove sources of inspiration to each other.

More than that, it seems to me, that some thought might be given to integrate the memberships of State and Local Bars with the American Association. What I mean is, that membership in a local bar might well include membership in the State and American Associations. That, too, would give us the advantage of a united front with the added influence which *that* would produce. Although, myself, not sold on the so-called integrated State bar, so much at least could be done. It would invigorate all of them. Just for example: in the last few months, locally, a committee of the Cleveland Association with Walter Stewart as chairman, has labored hard and long on a method of promoting better candidates for Judges and for a more discriminating plea of endorsement of candidates. They have produced a splendid report. It doesn't seem right, that the state and National Association should not have the benefit of that thoughtful contribution to a perplexing problem. And when our local Legislative Committee makes a recommendation upon some bill proposed in the legislature, how much more effective it would be, if there were such cooperation with the State Bar's Legislative Committee by all local Legislative Committees, so that when the recommendation reached the legislature, it would be the voice of the Ohio Bar rather than merely that of Cuyahoga County or Geauga County.

Locally, I think it regrettable that we should have three Associations—to the public it must look like three local unions, who at times seem to be engaged in a jurisdictional dispute. That doesn't help us with the people of the community, either. Being a member of only the older group, I feel that I can say that we perhaps are at fault. We have been too exclusive—too country-club. Right or wrong, we give the impression of trying to be the dudes of the bar, and of being unfriendly, not to say hostile, to the "lower priced," the "run of the mill" lawyers.

Mr. Justice Jackson in an address several years ago referring, as usual, to the bar's loss of prestige said:

"In our bar associations we generally pyramid conservation until at the top of the structure our bar associations are as conservative as cemetery trustees."

Even though we do not change the top, we certainly can broaden our base by a more widely distributed representation in the position where opposing views will be encouraged, may be fully aired and receive attention. Remember, it is these "common" lawyers, that are the most numerous and

that circulate in the community. It is they, who make friends and influence people. Some of them, even though they never met a payroll, know how to carry a precinct. We must enlist their whole hearted interest if we want to persuade the average voters upon whom we must finally depend to support our programs.

2. To be more explicit on the questions in which we may become effective as an organization in this broader realm, would take more time than I have.

(a) We should, I think, continue our campaign for the appointment of judges on some such plan as we proposed several years ago. It was probably a mistake to quit the agitation when we lost at the polls. That isn't the way causes are won. It requires a continuous campaign. Ever since the Dry's, after years of effort, put over Prohibition, no one should despair of accomplishing anything in time. It is difficult to explain and convince the layman that our plan is clearly in his interest. But it can be done. Like all reformers who think in the phrases: the voters should and the people *ought*, we too have got to realize that our major premise must be. The People *Do* and the People *Won't*, and work up from that. Yes, that's politics.

(b) In this connection we might also begin to study a plan of nomination for Federal and State Supreme Court judges proposed by Dean Wigmore 5 years ago—I haven't heard of any Bar Association that has considered it. He proposes what he calls, an "Eligible Roll of Judicial Honor" composed of lawyers chosen as qualified for the positions upon the Federal Supreme Court and the Supreme Courts of the States. *Immediately*, and not for the purpose of filling a current vacancy, the various State Bar Associations would choose as eligible for the Federal Supreme Court, one lawyer from the particular state and one from some other state. Thus there would be two choices by each State Bar. For the State Eligible list, each State Bar would choose four, as eligible for the State Supreme Court. These lists would be given national or state wide publicity at once. As Dean Wigmore contends, while there would be no compulsion by law, requiring the executive to appoint from this list, the force of an organized opinion would in many cases prompt the executive to appoint a man whom the bar had freely chosen as worthy of the honor, at a time when there was the least political complication and influence. This scheme on the face of it at least sounds better than our current practice.

(c) Judge Wilkin this morning, has spoken of the need for an international organization. After that eloquent address anything I could say would be an anti-climax.

We can all agree that the United Nations Organization was an epoch-making event. Perhaps it was, as one columnist said:

"The greatest international meeting ever held on United States soil and the most important human gathering since the Lord's supper."

But we must never forget that it was a mere beginning and that since that time has come the atomic bomb.

Thoughtful and far seeing men in and out of our profession, are coming to realize that the only answer to the *split* atom is a *united* world. Some are even daring to speak of the need of restrictions on sovereignty—that bugaboo of statesmen and congressmen—in the interest of a world order governed by international law, made effective by a world court to determine all disputes among nations. You say that's a dream and can't be realized. I'm not so sure about that, once the people understand that the only alternative is another world conflagration and blood-bath.

Surely that is a worthwhile undertaking for every Bar Association. They should lead in this crusade, whose object is not of peculiar benefit to the bar but for all mankind.

(d) High on the list of questions of general public interest with which we can concern ourselves and achieve merit in the eyes of the public, is that of Industrial Relations. President Truman in his message several weeks ago said that people don't like strikes. I don't suppose anybody likes them. But there seems to exist a shocking lack of intellectual capacity and ingenuity, in this country to cope with a situation which continually threatens the domestic peace.

District Judge Knox of New York has recently proposed the establishment of a Federal Court for hearing all labor disputes. Our own former Senator Burton, in collaboration with two other Senators, some time ago fostered a bill calculated to furnish a means of peaceful adjustment of such disputes. A Labor-Management conference is now being held in Washington. It may well be, that none of these plans, nor any other thus far advanced, are workable. But certain it is that the general public is anxiously awaiting some peaceful solution of a condition which in many particulars has the aspects of civil war. Public opinion has a way of refusing to be damned very long. It is therefore of the utmost urgency that some one devote serious thought—not emotion—to this particular problem which threatens to be with us for some time.

Of course it is a delicate subject. Even open attempt to discuss it will require not only intelligence, but even more, courage.

Here is a challenge to the organized bar to step forward and lead in an endeavor, not of personal benefit to lawyers only, but one that will bring to it the cheers and blessings of a long suffering public.

3. Just one word more: this has to do with the individual lawyer and his relation to the community.

President Taggart in that Trumbull County speech said:

"The lawyers will not only help themselves but the nation as well, by giving service to the community and recognizing that the public service phase of their profession is the reason for the powers and privileges they enjoy."

Of course you can point to many individual lawyers who devote some of their time to public affairs; some of them a great deal of time. Second only to the efforts of the organized bar I have referred to, the desirability of getting lawyers into politics is to me self-evident. And I mean lawyers who are the best equipped, who have had the benefit of a rounded education and who perhaps do not intend to make public office their life's work.

It used to be said: Scratch a lawyer and you'll find a politician. Unhappily that isn't so today. It almost seems that the most competent and best equipped for public service dread it the most. Speaking as a sort of vagabond politician myself, I can tell you it isn't all grief; its fun; at least when you're young. And it is not without its satisfactions and rewards.

Mr. Justice Douglas in a speech on this subject suggested that every lawyer upon admission to the bar be required to serve in public office for a year or two—a sort of political peacetime conscription. He said:

"When it becomes fashionable for the young lawyer to give a few years of his life to City or State, the lawyer will have resumed his traditional role of leadership in public affairs."

Judge Thatcher of New York, now sitting in the state's highest court, an able and distinguished lawyer and a fearless public official, referring, as usual, to the fading influence of the bar, suggested that every lawyer as a matter of duty, give some part of his time to public affairs. He said:

"I believe this may only be accomplished by dividing our time between our clients and the public, making clear in all of our *public* relations that we serve the *public* interest with the loyalty and confidence which are enjoined upon every lawyer when he undertakes to represent interests other than his own.—Certainly the retainers we accept imply no restraint upon our freedom thus to serve the public interest. If they do, they should not be accepted."

President Murray in his speech to this Association, to which I referred earlier said:

"Devotion to a client does not require a lawyer to adopt his client's social, economic or political ideals."

I'm afraid that is too often the fact. Even if it isn't, the public is all too likely to jump to that conclusion, and quite unjustifiably in many instances. It will take some unequivocal action by lawyers to remove that belief—and I am not pointing to lawyers of any particular class of clients either.

Some of you may recall that years ago John H. Clarke, later Justice of the Supreme Court, ran for the U. S. Senate against Calvin Brice. At that time Mr. Clarke was well known as a railroad lawyer. When in the campaign, he was asked how he reconciled some rather strong statements in the public interest, with his retainer as attorney for railroads, he said:

"They pay me merely for my services as a lawyer; my conscience is my own."

He was quite unlike the famous English nobleman of whom it was said: His conscience, instead of being his monitor, became his accomplice.

I should like to see our larger law offices, give some of their young men leave of absence for a year or two to serve in the legislature or City Council. That would be a practical demonstration of high minded citizenship which would reflect credit on them. It would be of benefit to the community, it would be a broadening influence to the man himself and make him a better lawyer.

4. "The Lawyer and the Community": a trite subject to be sure, but always new and of vast implications. Even if I haven't said anything new, the language of the eminent lawyers which I have quoted, should convince all of us, that to recover that prestige with the public, which they all tell us we have lost, requires something besides chest-pounding. We can't merely sit tight and "let the *status quo*." We can't rely on past glories: "there are no birds in last year's nests." It is a time for boldness, boldness to shake off this Old Man of the Sea to which these many speakers have so monotonously called our attention.

Let us not forget, that as lawyers our professional values depend upon the maintenance of such a free world as we now enjoy. Are we aware of the dangers to it? Our situation may be more serious than we think. With socialized medicine on the horizon, it may be *later* than we think.

If you have concluded that I am too much of a Cassandra, let me leave you with some encouraging words from Chief Justice Stone, found in the same speech from which I have previously quoted:

"Notwithstanding all the pressures of modern economic life upon the lawyer, and his absorption with the demands of client-caretaking, we could make no greater mistake than to assume that ours has become a profession without ideals. * * *"

No one familiar with the history of the Bar, knowing its life and personnel, can doubt that it has the idealism, the will to sacrifice, the capacity for leadership, which will continue to enable it to play well its part. * * * None will respond more willingly, with generous expenditure of time and effort, to the intelligent call for action. But none so much needs to know the *facts* which reveal, in clear relief, its altered position in the social structure and the manner in which under new conditions it is meeting its public responsibilities."

Newly Admitted Members of the Bar

WM. FRANCIS KELTON, admitted April 8, 1946, under special war service rule. Univ. of Colo., B.A. 1939, LL.B. 1942. Member Phi Delta Theta and Pi Alpha Delta. In school was active in debating and on the school paper. Was with Title Guaranty Co. for five months, and in the army 3½ years—communications officer 2 years and in the Army Air Force 1½ years. Is interested in property, torts and trial work. Is practising on his own at 613 Majestic Bldg., Denver.

MRS. KATHRYN L. STALLINGS, admitted as result of June exam, Sept. 30, 1946. Univ. of Colo., A.B. 1944, LL.B. 1945. Member Kappa Kappa Gamma. Was editor Rocky Mountain Law Review, member Phi Beta Kappa and Order of the Coif. Was instructor in law, Univ. of Colo. Interested in business and public law. Now with Federal Power Commission, Bureau of Law, Washington, D. C.

DAVID EUGENE JOHNSON, admitted June 1946 on motion. Arkansas U. A.B. 1908, law degree 1909. Member Delta Phi Delta. Taught school and farmed. Practised law in Arkansas 1912 to 1945. Interested in general practice, probate, title work. Now practising alone at Springfield.

JOHN A. MENTER, admitted July 1946 on motion. Nebraska U. B.A. and LL.B. 1934. Member Delta Theta Phi. Has practised in Nebraska since 1936. Interested in general civil practice. Is now trying to locate in Julesburg.

RICHARD D. HALL, admitted Oct. 1946 on motion. Chicago U. A.B. 1937; law 1939. Member Phi Alpha Delta. Was on law review. Admitted to Illinois bar 1939, and practised there until 1943. Army 1943-1946. Interested in insurance and real estate. Doing claim adjustment work for January and Yegge, Equitable Bldg., Denver.